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HOUSE BILL 261

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO FINANCING OF HIGHWAY PROJECTS; IMPOSING A GASOLINE SURTAX FOR TEN YEARS FOR THE PURPOSE OF EARLY RETIREMENT OF HIGHWAY BONDS; MAKING A DISTRIBUTION TO THE STATE ROAD FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act, Section 7-1-6.45 NMSA 1978, is enacted to read:

"7-1-6.45. [NEW MATERIAL] ADDITIONAL DISTRIBUTION--STATE ROAD FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the gasoline surtax, to be expended pursuant to the provisions of Subsection B of Section 67-3-65.1 NMSA 1978. "

Section 2. A new section of the Gasoline Tax Act is enacted to read:

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1           "[NEW MATERIAL] GASOLINE SURTAX. --For the privilege of  
2 receiving gasoline in this state, there is imposed from July 1,  
3 2004 to June 30, 2014 a surtax of five cents (\$.05) per gallon  
4 on each gallon of gasoline received in New Mexico that is  
5 subject to the gasoline tax imposed pursuant to Section 7-13-3  
6 NMSA 1978. The tax imposed by this section may be called the  
7 "gasoline surtax". "

8           Section 3. Section 7-13-4 NMSA 1978 (being Laws 1991,  
9 Chapter 9, Section 32, as amended) is amended to read:

10           "7-13-4. DEDUCTIONS--GASOLINE TAX AND GASOLINE  
11 SURTAX. --In computing the gasoline tax and gasoline surtax due,  
12 the following amounts of gasoline may be deducted from the  
13 total amount of gasoline received in New Mexico during the tax  
14 period, provided satisfactory proof thereof is furnished to the  
15 department:

16           A. gasoline received in New Mexico, but exported  
17 from this state by a rack operator, distributor or wholesaler  
18 other than in the fuel supply tank of a motor vehicle or sold  
19 for export by a rack operator or distributor; provided that, in  
20 either case:

21                   (1) the person exporting the gasoline is  
22 registered in or licensed by the destination state to pay that  
23 state's gasoline or equivalent fuel tax;

24                   (2) proof is submitted that the destination  
25 state's gasoline or equivalent fuel tax has been paid or is not

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1 due with respect to the gasoline; or

2 (3) the destination state's gasoline or  
3 equivalent fuel tax is paid to New Mexico in accordance with  
4 the terms of an agreement entered into pursuant to Section  
5 9-11-12 NMSA 1978 with the destination state;

6 B. gasoline received in New Mexico sold to the  
7 United States or [~~any~~] an agency or instrumentality thereof for  
8 the exclusive use of the United States or [~~any~~] an agency or  
9 instrumentality thereof. Gasoline sold to the United States  
10 includes gasoline delivered into the supply tank of a  
11 government-licensed vehicle of the United States;

12 C. gasoline received in New Mexico sold to an  
13 Indian nation, tribe or pueblo or [~~any~~] a political  
14 subdivision, agency or instrumentality of that Indian nation,  
15 tribe or pueblo for the exclusive use of the Indian nation,  
16 tribe or pueblo or [~~any~~] a political subdivision, agency or  
17 instrumentality thereof. Gasoline sold to an Indian nation,  
18 tribe or pueblo includes gasoline delivered into the supply  
19 tank of a government-licensed vehicle of the Indian nation,  
20 tribe or pueblo;

21 D. gasoline received in New Mexico, dyed in  
22 accordance with department regulations and used in [~~any~~] a  
23 manner other than for propulsion of motor vehicles on the  
24 highways of this state or motorboats or activities ancillary to  
25 that propulsion;

. 149238. 2

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1 E. gasoline received in New Mexico and sold at  
2 retail by a registered Indian tribal distributor if:

3 (1) the sale occurs on the Indian reservation,  
4 pueblo grant or trust land of the distributor's Indian nation,  
5 tribe or pueblo;

6 (2) the gasoline is placed into the fuel  
7 supply tank of a motor vehicle on that reservation, pueblo  
8 grant or trust land; and

9 (3) the Indian nation, tribe or pueblo has  
10 certified to the department that it has in effect an excise,  
11 privilege or similar tax on the gasoline; provided that the  
12 volume of gasoline deducted pursuant to this subsection shall  
13 be the total gallons sold in accordance with the provisions of  
14 this subsection multiplied by a fraction the numerator of which  
15 is the rate of the tribal tax certified to the department by  
16 the Indian nation, tribe or pueblo and the denominator of which  
17 is the rate of the gasoline tax imposed pursuant to the  
18 Gasoline Tax Act, but if the fraction exceeds one, it shall be  
19 one for purposes of determining the deduction; and

20 F. gasoline received in New Mexico and sold by a  
21 registered Indian tribal distributor from a nonmobile storage  
22 container located within that distributor's Indian reservation,  
23 pueblo grant or trust land for resale outside that  
24 distributor's Indian reservation, pueblo grant or trust land;  
25 provided the department certifies that the distributor claiming

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1 the deduction sold no less than one million gallons of gasoline  
2 from a nonmobile storage container located within that  
3 distributor's Indian reservation, pueblo grant or trust land  
4 for resale outside that distributor's Indian reservation,  
5 pueblo grant or trust land during the period of May through  
6 August 1998; and provided further that the amount of gasoline  
7 deducted by a registered Indian tribal distributor pursuant to  
8 this subsection shall not exceed two million five hundred  
9 thousand gallons per month, calculated as a monthly average  
10 during the calendar year. Volumes deducted pursuant to  
11 Subsection E of this section shall not be deducted pursuant to  
12 this subsection. "

13 Section 4. Section 7-13-4.4 NMSA 1978 (being Laws 2000,  
14 Chapter 50, Section 1) is amended to read:

15 "7-13-4.4. ADDITIONAL DEDUCTION--CERTAIN RETAIL SALES ON  
16 AN INDIAN RESERVATION, PUEBLO GRANT OR TRUST LAND.--In  
17 computing the gasoline tax and gasoline surtax due, a person  
18 other than a registered Indian tribal distributor may deduct  
19 from the total amount of gasoline received in New Mexico during  
20 the tax period, provided satisfactory proof is provided to the  
21 department, gasoline received in New Mexico and sold at retail  
22 in New Mexico if:

23 A. the sale occurs on an Indian reservation, pueblo  
24 grant or trust land;

25 B. the gasoline is placed into the fuel supply tank

. 149238. 2

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1 of a motor vehicle on that reservation, pueblo grant or trust  
2 land;

3 C. the Indian nation, tribe or pueblo has certified  
4 to the department that it has in effect an excise, privilege or  
5 similar tax on gasoline; provided that the gallons of gasoline  
6 deducted pursuant to this section shall be the total gallons  
7 sold in accordance with the provisions of this section  
8 multiplied by a fraction, the numerator of which is the rate of  
9 the tribal tax certified to the department by the Indian  
10 nation, tribe or pueblo and the denominator of which is the  
11 rate of the gasoline tax imposed pursuant to the Gasoline Tax  
12 Act, but, if the fraction exceeds one, the fraction shall be  
13 deemed to be one for purposes of determining the deduction; and

14 D. the person is subject to and in compliance with  
15 the tax on gasoline imposed by the Indian nation, tribe or  
16 pueblo where the sale occurs. "

17 Section 5. Section 7-13-5 NMSA 1978 (being Laws 1971,  
18 Chapter 207, Section 5, as amended) is amended to read:

19 "7-13-5. TAX RETURNS--PAYMENT OF TAX. --Distributors shall  
20 file gasoline tax and gasoline surtax returns in form and  
21 content as prescribed by the secretary on or before the twenty-  
22 fifth day of the month following the month in which gasoline is  
23 received in New Mexico. Such returns shall be accompanied by  
24 payment of the amount of gasoline tax and gasoline surtax due. "

25 Section 6. Section 7-13-11 NMSA 1978 (being Laws 1971,

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1 Chapter 207, Section 10, as amended) is amended to read:

2 "7-13-11. CLAIM FOR REFUND OR CREDIT OF GASOLINE TAX AND  
3 GASOLINE SURTAX PAID ON GASOLINE DESTROYED BY FIRE, ACCIDENT OR  
4 ACTS OF GOD BEFORE RETAIL SALE. -- Upon the submission of proof  
5 satisfactory to the department, the department shall allow a  
6 claim for refund or credit as provided in Sections 7-1-26 and  
7 7-1-29 NMSA 1978 for gasoline tax and gasoline surtax paid on  
8 gasoline destroyed by fire, accident or acts of God while in  
9 the possession of a distributor, wholesaler or retailer."

10 Section 7. Section 7-13-17 NMSA 1978 (being Laws 1998,  
11 Chapter 44, Section 2) is amended to read:

12 "7-13-17. PERMIT TO PURCHASE UNDYED GASOLINE FOR CERTAIN  
13 OFF-ROAD USE AND TO CLAIM REFUND OF TAX AND SURTAX. --

14 A. Any person using gasoline in the operation of a  
15 clothes cleaning establishment, in stoves or in other  
16 appliances burning gasoline, or operators of aircraft using  
17 aviation gasoline exclusively in the operation of aircraft,  
18 upon proper showing of the permit provided for in this section,  
19 may purchase gasoline to which dye has not been added and may  
20 claim a refund thereon under the provisions of this section.

21 B. Upon submission of proof satisfactory to the  
22 department that the requirements of this subsection have been  
23 met, the department shall allow a claim for refund of gasoline  
24 tax and gasoline surtax paid on gasoline purchased and used in  
25 the manner described in Subsection A of this section by holders

. 149238. 2

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1 of permits issued under this section. The individual purchases  
2 of gasoline, other than that used for aviation fuel, must have  
3 been made in quantities of fifty gallons or more. Purchasers  
4 of aviation fuel may accumulate invoices to reach the fifty  
5 gallon minimum. No claim for refund may be presented or  
6 allowed on less than one hundred gallons so purchased. The  
7 secretary may prescribe by regulation or instruction the  
8 documents necessary to support a claim for refund made pursuant  
9 to the provisions of this subsection.

10 C. The department shall create permits, in form and  
11 content as the secretary may prescribe, that will allow persons  
12 to purchase gasoline to which dye has not been added for the  
13 uses specified in Subsection A of this section. The secretary  
14 shall prescribe the method by which a person may apply for a  
15 permit.

16 D. The secretary, upon notice and after hearing,  
17 may suspend for a period of up to one year or revoke the  
18 gasoline tax and gasoline surtax refund permit of any person  
19 who makes any false statement on an application for a permit or  
20 on a claim for refund made pursuant to the provisions of this  
21 section, who uses the gasoline in a motor boat or in a vehicle  
22 registered to operate on the highways of this state or who  
23 violates any other provision of the Gasoline Tax Act. "

24 Section 8. Section 67-3-65.1 NMSA 1978 (being Laws 1983,  
25 Chapter 211, Section 40, as amended) is amended to read:

. 149238. 2

1 "67-3-65. 1. STATE ROAD FUND DISTRIBUTION. --

2 A. The amounts distributed to the state road fund  
3 pursuant to Sections 7-1-6.10, 66-6-23 and 66-6-23.1 NMSA 1978  
4 shall be used for maintenance, construction and improvement of  
5 state transportation projects and to meet federal allotments  
6 under the federal-aid road laws, but sufficient money from the  
7 state road fund shall be set aside each year by the state  
8 treasurer to pay the principal and interest due each year on  
9 state transportation revenue bonds issued to anticipate the  
10 collection of this revenue.

11 B. The amount distributed to the state road fund  
12 pursuant to Section 7-1-6.45 NMSA 1978 shall be used  
13 exclusively for redemption or repurchase of outstanding state  
14 transportation revenue bonds. The payments pursuant to this  
15 subsection are in addition to the payments pursuant to  
16 Subsection A of this section necessary to pay the principal and  
17 interest due each year pursuant to the terms of the bonds."

18 Section 9. EFFECTIVE DATE. --The effective date of the  
19 provisions of this act is July 1, 2004.